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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,888	12/22/2000	David John Tyrrell	16,497	9433

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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 03/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/746,888	TYRRELL ET AL.
	Examiner	Art Unit
	Jamisue A. Webb	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_\_.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-57 is/are pending in the application.

4a) Of the above claim(s) 8,9,35,36,42,44 and 48 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-7,10-34,37-41,43,45-47 and 49-57 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5,6,7.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

a. Group 1: Claims 8, 9, 35, 36 and 48 are drawn to one independent species.

Claims 18, 19, and 37 are drawn to another independent species.

b. Group 2: Claim 42 is drawn to one independent and distinct species.

Claim 43 is drawn to another independent and distinct species.

Claim 44 is drawn to another independent and distinct species.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1-7, 10-17, 20-34, 38-41, 45-47, and 49-57 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Alyssa Dudkowski on 3/5/02 a provisional election was made without traverse to prosecute the invention of the rheology modifier and slot coating, claims 18, 19, 37 and 43. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8, 9, 35, 36, 42, 44 and 48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-7, 10-13, 16-20, 40, 41, 43, 45-47, 49, 50, and 52-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. (6,149,934) in view of Klofta et al. (6,238,682).

7. With respect to Claims 1, 2, 20, 22-25, 40, 41, 53, and 55-57: Krzysik discloses the use of an absorbent article (20) with a topsheet, backsheet and core located there between (See Figure 1). Krzysik discloses the use of a lotioned topsheet to where the lotion composition is melted, applied to the topsheet and then cooled (column 13, line 64 to column 14, line 3). Krzysik discloses the use of a lotion composition on the topsheet that is melting temperature between 30-100 degrees Celsius (column 12, lines 31-34), a low sheer viscosity between 50000-80000 cP, a high sheet viscosity of 150-200 cP (column 12, lines 42-60), a penetration hardness between 5-360 mm (column 12, lines 66-67) disposed on the topsheet from 1-50 gsm (column 13, lines 44-49). Krzysik however does not disclose a lotion composition with a hydrophilic solvent, a high molecular weight polyethylene glycol, a fatty acid, a fatty alcohol and an extracted botanical active.

8. Klofta discloses a lotion composition with a 5-60% hydrophilic solvent (column 5, lines 6-8), a high molecular weight polyethylene glycol (column 10, line 9-10), 0.1-60% skin conditioning agent, such as fatty alcohols and fatty acids (column 18, line 10 to column 19, line 24), and a botanical active from 0.1-6% (column 16, lines 31-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik to be the composition of Klofta, in order to provide a lotion composition that kills viruses and imparts a soft lubricious feel. (see Klofta, abstract).

9. With respect to Claims 3 and 45: See Klofta, column 17, lines 13-42.
10. With respect to Claims 4, 5 and 46: See Klofta, column 17, lines 23-35.
11. With respect to Claims 6 and 47: See Klofta, column 24, lines 11-14.
12. With respect to Claim 7: See Klofta column 16, lines 31-42.
13. With respect to Claims 10, 11, and 49: Klofta discloses the use of a surfactant with an HLB value of greater than 7 (column 21, lines 12-14), but fails to disclose the use of glycerol stearate, polysorbate or water dispersible metal salts. It would have been an obvious matter of design choice to have the surfactant be either stearate, polysorbate or a water dispersible metal salt, since it has not been disclosed that the use of either stearate, polysorbate or a water dispersible metal salt solves any stated problem or is for any particular purpose and it appears that the invention would work equally as well with the surfactants of Klofta.
14. With respect to Claims 12, 13, 50: See Klofta column 27, lines 30-37.
15. With respect to Claims 16, 17, and 52: See Klofta column 18, line 10-12.
16. With respect to Claims 18, 19, and 53: See Klofta column 24, lines 30-40.
17. With respect to Claim 43: See Krzysik column 13, line 59.

18. Claims 14, 15, 21-39, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Klofta as applied to Claims 1 and 40 above, and further in view of Kropf et al. (6,316,030).
19. With respect to Claim 14, 15, 21, 39 and 51: Krzysik and Klofta, as disclosed above for Claim 1, fails to disclose the composition comprising a sterol. Kropf discloses the use of a composition that contains an effective amount, 0.1-5% sterol (see abstract and column 3, line 35-32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik and Klofta, to include the sterol of Kropf, in order to provide a caring and protective effect and increase skin moisture level (see Kropf column 1).
20. With respect to Claim 32: See Kropf column 2, lines 5-38.
21. With respect to Claim 26: See Klofta, column 17, lines 13-42.
22. With respect to Claims 27 and 28: See Klofta, column 17, lines 23-35.
23. With respect to Claim 29: See Klofta, column 24, lines 11-14.
24. With respect to Claim 34: See Klofta column 16, lines 31-42.
25. With respect to Claim 30: Klofta discloses the use of a surfactant with an HLB value of greater than 7 (column 21, lines 12-14), but fails to disclose the use of glycerol stearate, polysorbate or water dispersible metal salts. It would have been an obvious matter of design choice to have the surfactant be either stearate, polysorbate or a water dispersible metal salt, since it has not been disclosed that the use of either stearate, polysorbate or a water dispersible

metal salt solves any stated problem or is for any particular purpose and it appears that the invention would work equally as well with the surfactants of Klofta.

26. With respect to Claim 31: See Klofta column 27, lines 30-37.
27. With respect to Claim 33: See Klofta column 18, line 10-12.
28. With respect to Claims 37 and 38: See Klofta column 24, lines 30-40.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw *BN*  
March 11, 2002

*J. G. Weiss*  
John G. Weiss  
Supervisory Patent Examiner  
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